

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KALAMATA CAPITAL GROUP, LLC,

Plaintiff,

-against-

NEWCO CAPITAL GROUP, LLC D/B/A
KALABAKA CAPITAL GROUP, and
KALABAKA CAPITAL GROUP, LLC,

Defendants.

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DOC #:
DATE FILED: 1/12/2024

1:23-cv-442-MKV

ORDER

MARY KAY VYSKOCIL, United States District Judge:

Plaintiff initiated this action by filing a Complaint on January 1, 2023. [ECF No. 1]. On March 15, 2023, Defendants filed an Answer to the Complaint. [ECF No. 17]. In their Answer, Defendants asserted three counterclaims. [ECF No. 17]. With leave of the Court, Plaintiff moved to dismiss the counterclaims asserted in the Answer. [ECF No. 28]. Briefing has since concluded on that motion. [ECF Nos. 28–35].

On November 21, 2023, Plaintiff filed a motion seeking leave to file an Amended Complaint. [ECF No. 51]. After careful review of the parties' submissions with respect to that motion, the Court granted Plaintiff leave to file an Amended Complaint. [ECF No. 57]. Plaintiff subsequently did so. [ECF No. 58] ("Amended Complaint").

Thereafter, Defendants separately filed: (1) an Answer to the Amended Complaint, reasserting the same three counterclaims contained in their first Answer and adding three new counterclaims [ECF No. 67]; and (2) a letter requesting a pre-motion conference on Defendant Gurvitsch's anticipated motion to dismiss the claims in the Amended Complaint against him [ECF No. 68]. Plaintiff filed an opposition to Defendant Gurvitsch's request for a pre-motion conference. [ECF No. 71].

I. Plaintiff's Pending Motion to Dismiss Counterclaims is Denied Without Prejudice as Moot.

When an Amended Complaint has been served, it supersedes the Original Complaint and becomes the only complaint in the case, rendering the Original Complaint of no legal effect. *Pettaway v. Nat'l Recovery Sols., LLC*, 955 F.3d 299, 303 (2d Cir. 2020). Therefore, when Plaintiff filed its Amended Complaint, Defendants were required to file a new responsive pleading to that complaint. Fed. R. Civ. P. 15(a)(3) (“[A] any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.”) Defendants did so when they filed their Answer to the Amended Complaint, reasserting its prior three counterclaims and asserting three new counterclaims. [ECF No. 67]. As a result, Defendants’ Original Answer, which was responsive to the now-void Original Complaint, similarly no longer has effect. In other words, Defendants’ Answer to the Amended Complaint superseded its Original Answer against which Plaintiff had moved to dismiss the counterclaims.

As such, IT IS HEREBY ORDERED that Plaintiff’s pending Motion to Dismiss the counterclaims asserted in Defendants’ Original Answer is rendered moot and is dismissed without prejudice. IT IS FURTHER ORDERED that to the extent Plaintiff wishes to move to dismiss the counterclaims asserted in Defendants’ Answer *to the Amended Complaint*, Plaintiff must file its motion **on or before February 2, 2024**. Further briefing shall be submitted on the schedule set forth in Local Rule 6.1(b).

II. Defendants Are Granted Leave to File Its Anticipated Motion to Dismiss Claims Against Defendant Gurvitsch.

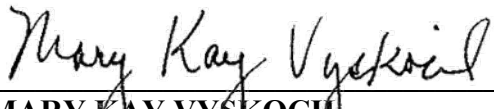
The Court turns now to Defendants’ request for a pre-motion conference on its anticipated motion to dismiss the claims in the Amended Complaint against Defendant Gurvitsch. [ECF No. 68]. After reviewing the arguments set out in the parties’ relevant submissions, Defendants’

motion for a pre-motion conference is DENIED, and Defendant Gurvitsch is GRANTED leave to file a motion to dismiss the claims against him. Defendant Gurvitsch must file his motion to dismiss **on or before February 2, 2024**. Further briefing shall be submitted on the schedule set forth in Local Rule 6.1(b).

The Clerk of Court is respectfully requested to terminate Docket Entry Nos. 28, 34, 68.

SO ORDERED.

Date: January 12, 2024
New York, NY



MARY KAY VYSKOCIL
United States District Judge